

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GORDON HEMPTON

Plaintiff,

v.

POND5, INC. et. al,

Defendants.

CASE NO. 3:15-cv-05696-BJR

ORDER DENYING STIPULATED  
MOTION TO SEAL

**I. INTRODUCTION**

Plaintiff Gordon Hempton and Defendant Pond5, Inc. (“Pond5”) jointly move this Court pursuant LCR 5(g)(3) for permission to file under seal Pond5’s Motion for Attorneys’ Fees and Costs and Exhibit 1 filed in support of Pond5’s motion. Dkt. No. 68. Having reviewed the motion, the relevant legal authorities, and the record of this case, the Court will deny the motion. The reasoning for the Court’s decision follows.

**II. BACKGROUND**

Exhibit 1 is an email written by Plaintiff that Pond5 obtained through discovery in September 2016. Before commencing discovery, the parties had entered into a Stipulated Protective Order that governed the exchange of documents and allowed each party to mark certain documents as “Confidential.” While a number of emails produced by Plaintiff through discovery were marked “Confidential,” Exhibit 1 was not. However, during Plaintiff’s

1 subsequent deposition, Plaintiff's counsel indicated that Exhibit 1 was confidential and  
2 designated the deposition testimony concerning Exhibit 1 confidential by requesting that it be  
3 separated into a separate "confidential" transcript.

4 Therefore, prior to filing its Motion for Attorneys' Fees and Costs and referencing  
5 Exhibit 1 in support of its motion, Pond5's counsel conferred with Plaintiff's counsel. During the  
6 conference, Plaintiff's counsel indicated that Plaintiff would continue to assert the confidentiality  
7 of Exhibit 1. As such, although Pond5 does not agree that Exhibit 1 warrants confidentiality  
8 protection, it agreed to jointly request this Court to allow Pond5's motion for fees and Exhibit 1  
9 to be filed under seal.  
10

### 11 III. DISCUSSION

12 "[T]he courts of this country recognize a general right to inspect and copy public records  
13 and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*,  
14 435 U.S. 589, 597 (1978). Therefore, courts must "start with a strong presumption in favor of  
15 access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.  
16 2003). This presumption is "based on the need for federal courts, although independent—indeed,  
17 particularly because they are independent—to have a measure of accountability and for the  
18 public to have confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d  
19 1044, 1048 (2d Cir. 1995). Accordingly, a party seeking to seal a judicial record "bears the  
20 burden of overcoming this strong presumption by meeting the 'compelling reasons' standard."  
21 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).  
22

23 The totality of Plaintiff's argument as to why Pond5's motion and Exhibit 1 should be  
24 filed under seal consists of the following two sentences:  
25

Hempton asserts that the subject email thread should remain sealed as it discloses  
an incipient business relationship which, if public, would reduce the value of the

1 project contemplated. The email communication discloses proprietary business  
2 plans which [*sic*] are those of the authors and should remain confidential for this  
purpose.

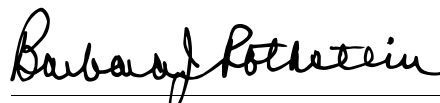
3 Dkt. No. 68 at 3.

4 This argument, such as it is, does not satisfy Plaintiff's high burden of establishing that  
5 filing the documents under seal is warranted. Indeed, Plaintiff does not bother to cite to any case  
6 law or other legal authority. Nor does he explain why disclosing this email would allegedly  
7 "reduce the value of the project contemplated" or why such an alleged risk outweighs the  
8 public's right to inspect judicial records and documents. Unsubstantiated statements based on  
9 hypothetical concerns cannot overcome the strong presumption in favor of access to public  
10 records.  
11

#### 12 IV. CONCLUSION

13 For the foregoing reasons, the stipulated motion to file Pond5's motion for attorneys' fees  
14 and costs and the supporting declaration and exhibit under seal is **HEREBY DENIED**.  
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16 Dated this 2nd day of February, 2017.

17 

18 Barbara Jacobs Rothstein  
19 U.S. District Court Judge  
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